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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954

NO. 51

ASSOCIATION OF WESTINGHOUSE SALARIED EMPLOYEES, Petitioner

v.

WESTINGHOUSE ELECTRIC CORPORATION

## BRIEF FOR THE RESPONDENT

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## BRIEF FOR THE RESPONDENT

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## QUESTION PRESENTED

Does Section 301 of the Taft-Hartley Act authorize a labor union to sue an employer in a United States District Court to recover salaries allegedly owed to employees represented by the union?

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## STATEMENT

On November 19, 1951, the petitioner filed a Complaint in its own behalf in the United States District Court for the Western District of Pennsylvania alleging therein:

1. That the plaintiff union, Association of Westinghouse Salaried Employees, was the collective bargaining representative for certain salaried employees of the defendant, Westinghouse Electric Corporation;

2. That on November 1, 1950, the union and the company entered into a collective bargaining agreement covering the terms and conditions of employment for said employees, a copy of said agreement being attached to the Complaint;

3. That approximately 4,000 employees whom the union represented did not work on April 3, 1951, and were not paid for that day;

4. That the company's failure to pay for the time not worked constituted a breach of the collective bargaining agreement; and

5. Therefore, the union was entitled to a judgment in *its* favor for the amount of the unpaid salaries.

On December 7, 1951, the respondent filed a Motion to Dismiss the Complaint on the grounds that (a) the Court lacked jurisdiction over the subject matter; (b) the plaintiff was not the real party in interest; and (c) the Complaint failed to state a claim upon which relief could be granted.

On May 26, 1952, the petitioner filed a "First Amended Complaint"; whereupon the respondent filed a second Motion to Dismiss asserting the same grounds as set forth in its original motion.

The Amended Complaint changed the form of the action to one brought by the union *"individually"* and *"in behalf of the individuals in interest whom it represents."*

In addition to asserting that the respondent's refusal to pay the 4,000 employees who did not report for work on April 3, 1951, was a breach of the collective bargaining agreement, the Amended Complaint asserted that respondent's refusal to pay violated certain written instruments which allegedly were a part of the collective bargaining agreement.

The Amended Complaint asked for Declaratory Judgment in favor of the petitioner declaring the rights of the parties under the collective bargaining agreement, and judgment in the amount of the unpaid salaries in favor of the individual employees *who were not named as parties to the action.* (R. 7)

District Judge Rabe F. Marsh held that the Court had jurisdiction over the subject matter and that the petitioner was a proper party plaintiff, but dismissed the Amended Complaint because it failed to state a claim upon which relief could be granted. More specifically, Judge Marsh held that the collective bargaining agreement did not provide that the respondent should pay employees for time not worked; that the numerous instruments attached to the Complaint as exhibits were not part of the collective bargaining agreement; and that there was nothing in the various instruments which would require the respondent to pay for the time not worked. (R. 81)

The Court dismissed the Complaint without prejudice to the petitioner to amend by setting forth a cause of action averring that the employees were absent from work because of some reason specifically covered by the contract. (R. 89)

The petitioner appealed from the District Court's Order to the Court of Appeals for the Third Circuit. (R. 89) The case was first heard by Circuit Judges Kalodner, Staley, and Hastie. It was reargued before the Court *en banc* on December 22, 1953. On January 28, 1954, the Court in a four to three decision entered an Order vacating the judgment of the District Court, and dismissed the Complaint for lack of jurisdiction. (R. 96) Chief Judge Biggs and Circuit Judges Kalodner and Hastie agreed with the District Judge that, as a matter of law, the petitioner's Complaint should be dismissed because it failed to state a claim upon which relief could be granted. (R. 107) The majority of the Court, speaking through Circuit Judge Staley, held that the Complaint

should be dismissed on the ground of lack of jurisdiction over the subject matter. (R. 96)

A petition for certiorari was filed by the union on April 26, 1954. The writ was granted on June 7, 1954. (R. 115)

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## SUMMARY OF ARGUMENT

The decision of the Court of Appeals dismissing the Complaint for lack of jurisdiction over the subject matter should be affirmed. The case is simply an attempt by a union to collect salaries belonging to employees through a law suit allegedly based upon a collective bargaining agreement. Jurisdiction is claimed solely by virtue of Section 301 of the Taft-Hartley Act which gives the District Courts of the United States jurisdiction of cases involving breach of agreements between a union and an employer. The Court of Appeals held that the right to salaries arose out of the individual employee's contract of hire and did not arise out of the collective bargaining agreement between the company and the union. No one had a job by reason of the collective bargaining agreement and there was no obligation on the part of the employer to pay any money by reason of it. The terms of the collective bargaining agreement regarding rates of pay and terms of employment were incorporated into the individual contracts of hire by the National Labor Relations Act but the *right* to the salaries arose from the individual contract of hire which could only be enforced by the individual employee who was a party to that contract.

*Summary of Argument.*

Section 301 of the Taft-Hartley Act does not contemplate suits for the enforcement of individual rights. Section 301 creates jurisdiction for the enforcement of rights by a union which are strictly *qua* union, or rights which are the joint rights of all of the employees represented by the union. The actions contemplated by Section 301 are those involving provisions of the collective bargaining agreement regarding strikes, lock-outs, union shops, maintenance of membership clauses, runaway shops and arbitration provisions. These provisions all involve rights in which the union has a direct interest. These provisions involve the joint rights of the employees which must be enforced by the union.

The decision of the Court of Appeals followed the law as announced by this Court regarding the respective rights of the parties arising out of the collective bargaining relationship and dismissed the case because the right to salaries arose from the individual employment contract.

An additional reason in support of respondent's position is that assuming, *arguendo,* that the nonpayment of salares involves a breach of the collective bargaining agreement, the union is not the proper party plaintiff to sue for salaries allegedly owed to the employees whom it represents. The right to a salary is an individual right belonging to the employee. By its very nature it cannot be the subject of a class suit. Prior to the enactment of the Taft-Hartley Act a union could only sue for the enforcement of the joint rights of its members. These were the only rights which an unincorporated association had. Section 301 of the Taft-Hartley Act did not change the

structure of an unincorporated association and it did not give the rights belonging to individual employees to the labor union which represented those employees.

In order to sustain petitioner's theory of jurisdiction this Court would have to interpret the Taft-Hartley Act contrary to the intent of Congress. Such an interpretation would require a labor union to prosecute all of the labor grievances of the individual employees whom it represents in the federal courts. Such a construction of Section 301 of the Taft-Hartley Act would have serious, far reaching effects upon the constitutionality of the Act, upon the effectiveness of the National Labor Relations Board, upon the rights of individual employees and upon the administration of justice by our federal courts.

## ARGUMENT

### I.

### The Decision of the Court of Appeals Dismissing the Complaint for Lack of Jurisdiction Over the Subject Matter Should Be Affirmed.

Counsel for the respondent respectfully directs this Court's attention to the following pertinent facts:

(a) At no time during the course of this litigation has the union claimed any damages to itself *qua* union.

(b) The rights here in dispute are admittedly the claims of the individual employees for salaries allegedly owed to the employees. (R. 98)

(c) No individual employee is a party to this suit; the union is the sole party plaintiff.

(d) The union has not averred authorizations or assignments from the individual employees of their claims for salaries.

(e) There is no diversity of citizenship.

(f) Jurisdiction is claimed solely by virtue of Section 301 of the Taft-Hartley Act.

The Court of Appeals followed the reasoning of this Court in the case of *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332 (1944). The Court of Appeals held, as this Court did in the *J. I. Case Co.* case, that the rights before the Court were the individual claims of the employees to their salaries, which claims arose out of the individual contracts of hire, and therefore the Court of Appeals held that the claims were not within the purview of Section 301 of the

Taft-Hartley Act. The Court of Appeals held that Section 301 created jurisdiction in the District Courts solely for the enforcement of rights by or against labor unions which were strictly *qua* union.

The *J. I. Case Co.* case involved the problem of the relationship of the collective labor agreement to the individual contract of hire.

The employer in that case refused to bargain with the certified bargaining representative of its employees because of the individual employment contracts which it had entered into with its employees. The Labor Board ordered the employer to *cease and desist* from giving any effect to the individual contracts, and from extending them or from entering into new ones. The Court of Appeals for the Seventh Circuit granted an order of enforcement. This Court granted certiorari in order to settle the problems and to declare the law regarding the two types of agreements. Speaking through the late Mr. Justice Jackson, this Court stated, beginning at page 334:

> "* * * Contract in labor law is a term the implications of which must be determined from the connection in which it appears. *Collective Bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone.* The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment. Without pushing

the analogy too far, the agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, *which do not of themselves* establish any relationships but which do govern the terms of the shipper or insurer or customer relationship whenever and with whomever it may be established. Indeed, in some European countries, contrary to American practice, the terms of a collectively negotiated trade agreement are submitted to a government department and if approved become a governmental regulation ruling employment in the unit.

"After the collective trade agreement is made, the individuals who shall benefit by it are identified by individual hirings. The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge. But the terms of the employment already have been traded out. There is little left to individual agreement except the act of hiring. This hiring may be by writing or by word of mouth or may be implied from conduct. *In the sense of contracts of hiring, individual contracts between the employer and employee are not forbidden, but indeed are necessitated by the collective bargaining procedure.*

*"But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement, even if on his own he would yield to less favorable terms.* The individ-

ual hiring contract is subsidiary to the terms of the trade agreement and may not waive any of its benefits, any more than a shipper can contract away the benefit of filed tariffs, the insurer the benefit of standard provisions, or the utility customer the benefit of legally established rates." (Italics supplied)

The case at bar is an attempt by a union to collect salaries belonging to individual employees through a law suit allegedly based upon a collective bargaining agreement. It is perfectly clear that this attempt by the union flies squarely in the face of this Court's declaration that the collective bargaining agreement is not an employment contract, and that there is no obligation on the part of the employer to pay any money to the individual employee by reason of it.

The Court of Appeals applied the law as announced by this Court when it held that the *accord* reached by the employer and the union in the collective bargaining agreement regarding rates of pay and hours of work became an essential part of the individual employment contract by reason of the National Labor Relations Act, and when it held that the obligation of the employer to pay the individual employees' salaries arose from the individual employment contracts. It is respectfully submitted that these contracts can only be enforced by the individuals who are parties to the contracts and then, only in forums provided for such actions.

It is admitted that the individual employment contracts cannot waive benefits afforded by the collective bargaining agreement. It is also admitted that the bargaining representative should be satisfied that the indi-

vidual agreements are not inconsistent with the policies established by the collective bargaining agreement. However, the National Labor Relations Act has already provided this safeguard to the collective bargaining process. This is the very problem which was before this Court in the *J. I. Case Co.* case. This Court charged the Labor Board (the Board established by the Congress for this very purpose) with the duty of seeing that the individual contracts of hire did not thwart the collective bargaining process. It is respectfully submitted that the Congress never intended, by enacting Section 301 of the Taft-Hartley Act, that the District Courts should take this "function" from the Labor Board.

The controversy arising out of the individual contracts now before this Court has already been before the National Labor Relations Board. On October 1, 1951, the petitioner filed an unfair labor practice charge with the National Labor Relations Board, contending in effect that the employer's construction of the individual contracts of hire constituted an unfair labor practice. On July 25, 1952, the Regional Director of the National Labor Relations Board found after a complete and thorough investigation, that the petitioner's claim was completely without merit, and accordingly, refused to issue a complaint against the respondent. The refusal to issue a complaint was appealed by the petitioner to the General Counsel of the National Labor Relations Board in Washington, D. C. This appeal was, after further review and investigation, denied by the General Counsel on October 21, 1952, and the decision of the Regional Director in refusing to issue a complaint was affirmed. If the construction of the individual contracts which the employer has adopted had

violated the collective bargaining process, the National Labor Relations Board should have been the tribunal to make that finding.

The Court of Appeals held that the petitioner's case did not come within Section 301 of the Taft-Hartley Act because the obligation of the employer to pay wages did not arise out of the collective bargaining agreement. Section 301 creates jurisdiction for the enforcement of the collective rights of the group. Section 301 creates jurisdiction for the enforcement of the employer's promises in which the union has a direct interest. Such provisions as the lock-out, union shop, maintenance of membership clauses, runaway shop and arbitration provisions apply directly to the union as the collective rights of all of the members. These rights are the joint rights of all of the employees which must be enforced by the union as the representative of the group. These are the rights which can be enforced in a lawsuit under Section 301 of the Taft-Hartley Act.

It is respectfully submitted that the Court of Appeals correctly held that the right to a salary is the individual several right of the employee, which right could not be enforced by the union under the purported authority of Section 301 of the Taft-Hartley Act.

## II.

## A Labor Union Is Not the Proper Party Plaintiff in an Action to Recover Salaries Allegedly Owed to Employees Represented by the Union.

The amended complaint prays that judgment be entered against the company and in favor of the *individual employees* for the amount of their unpaid salaries.

The individual employees are not parties to this action. This is no averment by the union that the employees have authorized it to institute this action on their behalf, or that the employees have assigned their rights to their salaries to the union. In point of fact part of the relief requested by the union is a complete list of the employees concerned.

It is the company's position that a federal court cannot award judgment for salaries to the individual employees in a suit brought by the union. It is the company's position that this is so, even if it could be established that the company had breached the collective bargaining agreement.

It is a fundamental principle of law that a court will never make a declaration as to, or affecting, rights of persons not parties to the proceeding. See *30 Am. Jur.*, Section 35, (p. 836); 49 C.J.S., Section 28, (p. 68); 68 A.L.R. 112.

This rule is not altered by a representative action in the form of a true class suit or a suit brought by a representative appointed by law. Careful analysis of true representative actions reveals that the court's judgment is effective not upon *absent* parties but upon *unnamed* par-

ties, and it is effective upon *unnamed* parties only because they are present in court by representation.

It is well settled that the *true class* action is the only representative suit of the various class actions where unnamed parties are bound by the judgment. A true class action is one wherein "but for the class action device, the joinder of all interested persons would be essential. This would be in cases where the right to be enforced was joint, common, or derivative." *Moore, 2 Federal Practice 2236; Pentland v. Dravo Corporation,* 152 F. (2d) 851 (C.A., 3, 1945).

There must be a common undivided interest; there must be a common source for the claims.

The true class action device has been particularly applicable to suits by or against unincorporated associations because at common law an unincorporated association had no legal existence. It could not sue or be sued. Suits by or against such associations could only be maintained by joining all of the members, or a representative number in a true class action. *Vol. 2 Barron & Holtzoff,* Sec. 487 (p 31); *4 Am. Jur.* Sec. 46, *et seq.,* (p. 485). In such actions the rights sought to be enforced were necessarily the joint rights of the members for the reason that the association, as such, had no rights.

In the case of *United Mine Workers of America v. Coronado Coal Co.,* 259 U.S. 344 (1922), this Court held that an unincorporated association could sue or be sued in its own name in cases arising under federal law. This decision did not, however, change the legal structure of the association. The association still had no existence

apart from its members, and the rights which could be enforced by it were the joint rights of its members.

In the case at bar the union is admittedly suing for the individual employees' salaries. The individual employees are not named parties to the action. Are they parties by virtue of representation?

The individual employees are not parties to this action by reason of a true class action. Claims for salaries can not be the subject of a true class action. One employee's right to his salary does not depend upon another employee's right to salary. There is no undivided interest in the employees to the salaries. Each employee's right is separate and distinct from the others. Each employee's right to his salary arises from his own contract of hire. *J. I. Case Co. v. N.L.R.B., supra.* The law is well settled that an employee's claim for his salary cannot be a joint claim with those of other employees similarly situated. *Pentland v. Dravo Corporation, supra; Fowkes v. Dravo Corporation,* 62 F. S. 361 (E.D., Pa., 1945); *Long, et al v. Dravo Corporation,* 6 FRD 226 (W. D., Pa., 1946); *Clougherty v. James Vernor Co.,* 187 F. (2d) 288 (C. A., 6, 1951) and see *Newsom, et al v. E. I. Dupont de Nemours & Co.,* 173 F. (2d) 856 (C.A., 6, 1949) and *Sturgeon, et al v. Great Lakes Steel Co. poration,* 143 F. (2d) 819 (C.A., 6, 1944).

These principles of law make it impossible for an unincorporated association to enforce the individual claims of its members. Prior to the Taft-Hartley Act it was specifically held that a labor union could not sue to recover salaries or wages belonging to the individual members of the union. *Milk Wagon Drivers Union of Chi-*

*cago Local 753 v. Associated Milk Dealers, Inc.*, 42 F. S. 584 (N. D., Ill. E. D. 1941); *Joint Council Dining Car Employees Local 370 v. N.Y. Central R.R. Co.*, 7 FRD 376 (N.D., Ill. E. D., 1946). In *Vol. 2 Barron & Holtzoff*, copyrighted in 1950, three years after the enactment of the Taft-Hartley Act, the law is stated on page 7 as follows:

> "Cooperative companies and unincorporated associations have been denied the right to sue for damages to their members under the anti-trust laws without showing the legal right of the association to recover. The same is true of an action to enforce an individual employment contract even if it is based on an agreement with a labor union."

The question thus resolves itself as follows: Did Congress intend, and did the Taft-Hartley Act in fact, change the existing law so as to enable a union to sue the employer for salaries allegedly owed to the employees represented by the union?

Title III of the Labor Management Relations Act of 1947, 29 USCA, Sec. 185, provides as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> "(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activi-

ties affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United tSates, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization."

To enable the union to institute the present suit means that the Act must be interpreted that Congress has made the labor union a trustee *ad prosequendum* for the enforcement of individual employee rights which are several in nature.

It is respectfully submitted that the intent and effect of the Taft-Hartley Act was to enable the employer to

hold the union accountable for its collective agreements in the federal courts. This was not possible prior to the Taft-Hartley Act. The respondent concedes that the union is the proper party to enforce the joint claims of its members because these are the only claims that an unincorporated association can have. But respondent respectfully submits that the union is not the proper party to enforce the individual rights of the employees whom it represents.

It is respondent's position that no authorization for a suit by a union for the individual claims of the employees whom it represents can be found in the Taft-Hartley Act. Nowhere in the legislative history of the Taft-Hartley Act, nor in the Act itself, is there any indication that Congress intended to change the type of interest and rights which the unions could enforce.

The purpose of Section 301 of the Taft-Hartley Act was stated in Senate Report 105, S. 1126, 80th Congress (1 CCH Labor Law Reports, Par. 3350.05) to be:

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.
>
> "Consequently, to encourage the making of agreements and to promote industrial peace through

faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal Court. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal Courts in disputes affecting commerce.

"The amendment specifically provides that only the assets of the union can be attached to satisfy a money judgment against it; the property of the individual members of the organization would not be subject to any liability under such a judgment. Thus the members of the union would secure all the advantage of limited liability without incorporation of the union.

"The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations. At common law voluntary associations are not suable as such."

In construing the Taft-Hartley Act the Courts seem to be in complete accord as to the purpose and meaning of Section 301.

In the case of *Wilson & Co., Inc., v. United Packing House Workers of America,* 83 F. S. 162, page 166, (S.D., N.Y., 1949) the court, in construing Section 301, stated:

"Its purpose was to do away with the difficulties which arose in attempting to enforce the provisions of collective bargaining agreements by reason of the fact that in many states labor unions were not suable as entities and in others only under certain circumstances, and that relief against the members in-

dividually was generally impracticable, if not unattainable."

In the case of *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 182, pages 187 and 188, (C.A., 4, 1948) the Court stated:

"Contention is made that jurisdiction is vested in the District Court by section 301 (b) of the act, 29 U.S.C.A. § 185 (b), providing that a labor organization may sue or be sued in the courts of the United States 'as an entity and in behalf of the employees whom it represents': *but the purpose and effect of this provision was manifestly to make clear the capacity of labor organizations to come or be brought into court as parties* (Cf. Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 4 Cir., 148 F. 2d 403), *not to enlarge the class of cases of which the District Court were given jurisdiction. The difference between such a provision and one conferring jurisdiction is well illustrated by comparison of 301 (b) of the act with 301 (a), the latter of which confers on the District Courts jurisdiction of suits between employer and labor organizations for violation of contracts.* Another provision conferring jurisdiction on the District Courts is section 303 (b) of the act, which authorizes them to entertain suits for damages on account of the strikes and boycotts made unlawful by section 303 (a). There would, of course, have been no reason for the enactment of either section 301 (a) or section 303 (b), if the effect of section 301 (b) was to vest in the federal courts general jurisdiction of suits by or against labor unions." (Italics supplied)

See also *Schatte v. International Alliance of Theatrical Stage Employees*, 84 F. S. 669 (S.D., Cal., 1949); *United Packing House Workers of America v. Wilson & Co.*, 80 F. S. 563 (N.D., Ill., E.D. 1948).

To say that Section 301 authorizes the union to enforce the rights of its members whether such rights are *joint* or *several* is in effect saying that an employee by joining a union automatically assigns his individual claims to the union. In addition to the objection that the Act does not say this, there is a much stronger objection to petitioner's position. Section 301 (b) does not say that a union can sue in behalf of its members; it says, *a union can sue in behalf of the employees whom it represents.* Under the National Labor Relations Act and under the Taft-Hartley Act, *a union may act for all of the employees of a unit as their collective representative whether the employees are members of the union or not.* Therefore, petitioner's position must mean that an employee, by merely going to work, automatically assigns his claim for salary to the union representing his unit even though he is not a member of the union. To state the proposition makes apparent how untenable it is.

Not only is such a construction of Section 301 untenable; such a construction would most certainly create serious questions as to its constitutionality. The problem raised by the construction urged by the petitioner has in effect been presented to the federal courts in the many cases arising under the Fair Labor Standards Act of 1938.

Petitioner urges that the words in Section 301 (b) "any such labor organization may sue or be sued as an

entity and in behalf of the employees whom it represents," authorizes the union to sue for the individual employees' salaries.

Section 16 (b) of the Fair Labor Standards Act of 1938, 29 U.S.C.A. 216 (b) provides:

> "* * * Action to recover such liability may be maintained * * * by any one or more employees for * * * themselves and other employees similarly situated. * * *"

In the case of *Pentland v. Dravo, supra,* certain named employees instituted an action under this section to recover overtime pay for themselves and for approximately 500 other employees similarly situated who were not named as parties. The Court of Appeals reviewed the law of representative suits as well as the decisions construing this section of the Act and held that an employee's claim for wages was several in nature arising from his individual employment and could not be enforced by other employees similarly situated. The Court construed Section 16 (b) as authorizing a spurious class suit or permissive joinder of the employees similarly situated.

In the case of *Clougherty v. James Vernor Co.,* 187 F. (2d) 288 (C.A., 6, 1951) the same problems arose under Section 16 (b). The Court followed the law as stated in the *Dravo* case and held that Section 16 (b) did not authorize one employee to sue for the wages belonging to another. At page 290 the Court stated:

> "It does not permit a plaintiff to represent another employee without specific authorization, and if it did so it doubtless would be subject to constitu-

tional attack. *The employee thus represented without his consent might be deprived of due process of law.* He could not be bound by any judgment rendered, and yet his case, or some portion of it, might have been tried in the proceedings. Moreover, the defendant has a constitutional right to know who is suing it and the nature of the action against it. To be confronted by a number of claims at the trial, without an opportunity to properly prepare to contest them, would be plainly unfair." (Italics supplied)

Counsel for respondent respectfully submits that the same reasoning should be applied to Section 301 in the case at bar. Congress did not, and possibly could not, assign the individual employees' claim for salaries to the union.

Section 301 was very carefully analyzed and considered by Judge Rifkind, of the District Court for the Southern District of New York, in the case of *Rock Drilling, etc., v. Mason & Hangar, Inc.,* 90 F. S. 539 (S.D., N.Y., 1950).

That case was an action brought by a union in a representative capacity on behalf of its members who were employed by the defendant. The complaint alleged that the company had bribed an officer of the International Union which resulted in the employees working for lower wages and less favorable working conditions than they would have otherwise obtained. It was conceded, and the Court so held, that the claims of the various employees were *several* rather than *joint* and that prior to the Taft-Hartley Act the jurisdictional re-

quirements would have had to have been met by each individual claim. The plaintiff contended, just as the petitioner before this Court is contending, that the Taft-Hartley Act, in effect, appointed the union a *trustee* for the purpose of suing to enforce claims accruing to the employees whom it represents. The Court framed the issue at page 540:

> "* * * The question is thus squarely presented whether Sec. 301 (b) has accomplished such a change as plaintiff alleges. Has it in fact appointed the union a quasi trustee or a trustee *ad prosequendum* to enforce the *several claims* of its members in all or some categories of action?" (Italics supplied)

It should be noted that the issue as framed by the Court completely covers the proposition now before this Court. That is, *does Section 301 (b) appoint the union a Trustee to enforce the several claims of its members in all or some categories of action?*

In answering this proposition in the negative the Court, by Judge Rifkind, stated at page 541:

> "* * * The limitation suggests, by illustration, the host of questions which the Congress has left unanswered *if by the language of Sec. 301 (b) it meant to appoint the union the litigating agent, for those it represents as collective bargaining representative.* What categories of claims may the union assert? Shall it be limited to claims arising out of the employment relationship or may it prosecute all claims? Shall they be claims asserted only on behalf of all the members of the group or may

claims be asserted on behalf of some—less than all —members of the group? What if one of the members of the group before or after action instituted by the union desires to assert his own claim? Is he obliged to commit his claim to the care of the union regardless of his wish to proceed independently? Is he bound by judgment procured in the group action or is he free to disregard it? Is the defendant protected in paying a judgment secured by the group in favor of an individual or is it subject to the jeopardy of additional claims asserted by the individual?

"Neither the statute nor the legislative history affords answers to those questions. I think it improbable that the Congress intended a grant of power which would stimulate such a host of problems for which no answers were provided. I have searched such of the legislative history as has been called to my attention in vain to discover explicit or implicit an intention on the part of the Congress to have the unions appointed trustees *ad prosequendum* or guardians *ad litem* for the individual employees represented by the union as collective bargaining representatives.

"Moreover, plaintiff's interpretation is two-edged. If the sentence 'Any such labor organizations may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States' has the meaning plaintiff attributes to it, I see no reason why straightforward statutory interpretation does not lead to the result that unions may *be sued* in behalf of the employees on claims against individual members. The multitude of com-

plications this interpretation raises need not be articulated.

"The much simpler approach to the statute reads it as a rule defining capacity to sue. The statute authorizes unions in controversies involving union rights to sue in their common names. Thereby, the statute obviates the necessity of meeting the common law requirement that all members of an unincorporated association must join in the suit. In effect, the gist of the statute is to dispense with the class suit device which has been used in order to overcome the common law mandate." (Italics supplied)

The Court held that the words used in Section 301(b), which permitted the labor union to sue as an entity, enabled the union to assert only the *joint* rights of its members; and that the additional words *"and in behalf of the employees whom it represents"* were inserted for the reason that under the Labor Acts, labor unions represented all employees of a unit, whether those employees were members of the union or not. At page 542 Judge Rifkind said:

"The significance of the language 'in behalf of the employees whom it represents' is plain enough under this interpretation. Normally an action in the common name of the union would be, strictly speaking, designed to assert rights on behalf of its members. *However, under the Taft-Hartley Act or the National Labor Relations Act, 29 U.S.C.A. 151 et seq., a union may act for all the employees of a unit as their collective bargaining representative regardless of their membership.* 29 U.S.C.A. § 159.

> This added language in Sec. 301 (b) makes it plain that in a proper case it may sue 'in behalf of the employees whom it represents'." (Italics supplied)

Petitioner's case is not helped by Rule 17(a) of the Federal Rules of Civil Procedure because the right to salaries arises out of the individual employment contract and this contract has to be the basis of the suit. The individual employment contract is not a contract made by a party for the benefit of another.

It is respectfully submitted that even if it is assumed, *arguendo,* that the claims for salaries sought to be recovered here, involve a breach of the collective bargaining agreement, as well as the individual contracts, the union is entitled to no more than an adjudication of the rights of the parties to the contract. It cannot recover salaries owed to the individual employees whom it represents.

## III.

## Petitioner's Case.

While counsel for the petitioner admits that the legislative history of Section 301 of the Act is not "crystal" clear, he makes crystal clear to this Court the way he wishes it to interpret the Section.

In the summary of his argument (page 6), he states:

> "* * * it is plain that Congress did intend that collective bargaining contracts should be enforceable by both parties at law, and that the federal court should be open to resolve disputes as to the meaning of collective bargaining contracts as a method of avoiding strikes and industrial conflict."

He asks this Court to interpret Section 301 of the Act so that:

> "This basic Congressional purpose can be effectuated only by holding that the substantive problem as to the distribution of rights under a collective bargaining contract must be settled in accordance with federal law, consonant with the other provisions of the National Labor Relations Act, as amended."

On page 9 of his summary he states that:

> "* * * the statutory mandate is without exception or qualification, the mandate must be construed as conferring a right to sue for violation of such provisions. If there were any doubt, it would be removed by Section 301 (b), which specifically authorizes a union to sue as an entity in the federal courts in behalf of all of the employees whom it represents in collective bargaining."

In the case at bar the union is attempting to collect salaries which admittedly belong to the individual employees represented by the union. In his attempt to persuade this Court that the federal courts have jurisdiction under Section 301 of the Act, counsel for the petitioner reasons that a claim for salaries is a grievance, and that in order to insure that the policy of the National Labor Relations Act is effectuated, all grievances must be processed by the union under federal law. Accordingly, he wishes this Court to interpret Section 301 of the Act so as to make the federal district courts the final arbitrators of all grievances.

Such an interpretation by this Court would produce, among others, these results: (a) that federal law would

have to preempt the field; (b) that the common law rights of the individual employees would be completely severed; (c) that the union would become the *parens patriae* for not only the members of the union but for every employee of the particular unit represented by the union; (d) that the common law rights provided to the employers would be abolished; (e) that there would be no forum to hear the individual employee's claims against the union; (f) that the federal district courts would become labor courts, required to pass upon every individual employee's claim and grievance; and (g) that if the present suit states a claim upon which relief can be granted, the District Court of the United States for the Western District of Pennsylvania will have before it 4,000 separate suits which it must try in addition to its present bulging docket.

It is respectfully submitted that the Congress never intended these results in enacting Section 301 of the Act, and that the Congress *did not* enact such results when it passed Section 301. Petitioner has been unable to produce one shred of legislative history, one court decision, or one text book authority to the effect that Section 301 means what petitioner is asking this Court to declare it to mean. It is inconceivable that the Congress intended, in enacting Section 301, to open the doors of the federal courts so wide as to enable a union to bring a suit in a federal district court for every alleged wrong and for every alleged grievance suffered by the individual employee who is represented by the union instituting the suit.

It seems to counsel for the respondent that the intention of Congress in enacting Section 301 is plain.

Congress knew that in some states unions as unincorporated associations could not sue and could not be sued. Congress desired to remove this barrier to their legal responsibility. Congress knew that the federal rules of civil procedure in dealing with a union's capacity to sue had previously made applicable by Rule 17 (b), the rules of the states in which the respective district courts sit. It knew that Rule 17 (b) provided that a union could sue or be sued under a law of the United States, regardless of the state law where the suit arose. It knew that the union could sue for the violation of any law enacted by the Congress of the United States.

Knowing this, what did Congress intend when it passed Section 301 of the Act?

It is respectfully submitted that Congress intended to make companies as well as unions answerable for their collective bargaining agreements in the federal district courts, and that Congress intended that those suits could be instituted "without regard to the citizenship of the parties." Had Congress intended the creation of a federal substantive right which would enable a union to sue on behalf of the individual employees whom it represents for the individual employees' claims in any district court of the United States, instead of creating a right to sue in the federal courts for the rights of the union *qua* union, the clause, "without regard to the citizenship of the parties" would have been unnecessary. Suits arising under the laws of the United States may be brought in federal courts without respect to diversity of citizenship. The use of the clause, "without regard to the citizenship of the parties" is conclusive evidence that Congress had no such intention; that Congress in-

tended only to create a right to enforce collecting rights in the federal courts. It is likewise plain that the language used in Section 301 (b) of the Act was inserted by Congress only to make it clear that in enforcing those collective rights, the union was doing so on behalf of all of the employees whom it represented and not only enforcing the collective rights of its members.

That it was not the intention of the Congress to create such a federal substantive right can be inferred in a negative sense. Since there is nothing said affirmatively on this point in any of the published reports on the bill, it seems crystal clear that Congress had no such intention. Is it possible to conceive that the Congress enacted such a rule into Section 301 of the Taft-Hartley Act without some Representative or without some Senator having questioned the desirability of opening the doors of the federal courts to enable unions to prosecute in those courts all of the individual claims and all of the individual grievances that the employees represented by the union might have against the company? Is it conceivable that such a law would have been enacted without hearings before the Judiciary Committees of both houses of the Congress?

To ask the questions is to answer them.

It is respectfully submitted that had any member of the Congress believed that they were enacting into Section 301 of the Taft-Hartley Act the interpretation of the Act which counsel for the petitioner is seeking to obtain from this Honorable Court, nothing short of a furore would have been created in both houses of the Congress. It is submitted that there would have been hearings upon the question before the Judiciary Committees of both

Houses of the Congress, and it is further submitted that had it been thought that the interpretation here sought was even a remote possibility, Section 301 of the Act would have failed to pass without qualifying language which would have made such an interpretation impossible.

Is it possible that no voice would have been raised in Congress against a construction of Section 301 of the Taft-Hartley Act which would make the federal district courts, labor courts to hear all of the individual employees' claims and grievances?

Is it possible that no member of the Congress would have mentioned the fact that the federal courts have jealously guarded the jurisdictional grants which Congress has made pursuant to Article III of the United States Constitution?

Is it possible that no member of Congress would have brought to the attention of the Congress the dissenting opinion of Mr. Justice Frankfurter in the case of *Williams v. Austrian,* 331 U. S. 642, (1947)? The language used by Mr. Justice Frankfurter in that case is most pertinent to the problem. At page 680 he said:

> "When Congress has not, by plain language, extended the jurisdiction of the district courts which are the feeders of the Circuit Courts of Appeals and of this Court, an unexpressed purpose to swell the dockets of the federal judiciary ought not to be attributed to Congress by considering in isolation the desirability of allowing a particular class of litigation to be brought in a federal court. Any advantage of giving jurisdiction to the federal courts must be

balanced against the disadvantages of taking away from the State courts causes of action rooted in State law. And in considering the advantages of absorption by the federal courts of jurisdiction theretofore vested in the State courts, it should be our special concern to be mindful that the district courts are part of a single judicial system. Increase in the scope of the business of the district courts inevitably reflects itself in the business of the Circuit Courts of Appeals and of this Court. It is a truism, but vital to keep in mind, that increase in the quantity of the court's business affects the quality of its work.

"Where Congress has clearly enlarged the jurisdiction of the district courts, it cannot be withheld no matter what the effect upon the dockets. But where Congress has not manifested its purpose with clarity—more particularly, where such purpose is derived by way of elaborate argumentation—resolution of jurisdictional doubts properly takes into account the strong policy of Congress, expressed through a series of judiciary acts, not to cast burdens upon the federal courts which interfere with the effective discharge of their functions. See, for instance, *American Secur. & T. Co. v. District of Columbia,* 224 U.S. 491, 56 L. ed. 856, 32 S. Ct. 553 and *Phillips v. United States,* 312 U. S. 246, 250, 251, 85 L. ed. 800, 804, 805, 61 S. Ct. 480."

Assuming *arguendo* the desirability of the interpretation of Section 301 of the Act sought by the petitioner in the case at bar, the desirability of the result sought is not the issue presently before this Court for decision. The issue is rather, as stated above, did Congress intend this result and was this result enacted into Section 301 of the Taft-Hartley Act? In his desire to secure such an

interpretation, and in his desire that there be established a body of federal substantive law (even one which would preclude the states from applying local rules of decision in cases affecting inter-state commerce), counsel for the petitioner has the support of some few labor economists, including the support of Mr. Jack Barbash, whose extensive argument on the structure of the collective bargaining process is printed as Appendix "A" of petitioner's brief. It is admitted that Mr. Barbash feels that a uniform Federal labor law would be desirable. It is submitted, however, that his writing on the subject stands on no better footing than the petitioner's brief which seeks the same result.

Counsel for the petitioner, however, has little support in his desire that this result be reached through an interpretation of Section 301 of the Taft-Hartley Act by the Supreme Court of the United States. Professor Archibald Cox, writing on "Federalism in the Law of Labor Relations," 67 *Harv. L. Rev.*, 1297, 1338 (1954), says that while he would prefer the establishment of federal law, leaving to local substantive law only cases involving employers and employees not subject to NLRB jurisdiction, he, nevertheless, doubts

> "* * * the propriety of placing such an interpretation on the present statute. LMRA Section 301 is phrased in terms of jurisdiction and standing to sue. It adds a good deal to the words to read in an instruction to the district courts to develop a body of substantive law. It adds immeasurably more to infer that the federal law should be exclusive, for this conclusion opens the door to removal of actions commenced in a local forum. Nor could one stop there and hope to avoid incongruities. Since Section 301 is

probably inapplicable to suits by individuals, the state courts retain this jurisdiction. It would create hopeless confusion to have one rule applicable to suits by a labor organization and another to suits by individuals. Uniformity could be achieved under a body of federal substantive law only by holding that the rules of decision developed by the federal courts were binding in state tribunals. This would have the rather odd consequence of giving the individual a cause of action under the laws of the United States on which he could sue only in a state court. All this may be wise, but is not the edifice too imposing for the courts to construct on so small a statutory foundation? Since Section 301 is constitutional even though given only the jurisdictional significance by its words, there is no need to imbue it with far-reaching substantive connotations."

In a comment dealing with Section 301 of the Taft-Hartley Act, appearing in 21 U. of Chicago L. Rev. 251, 253, it is said:

> "* * * if it intended as fundamental a change as the development of a federal substantive law, it is not easy to believe that Congress would have attempted to give effect to that intention so laconically."

Upon penalty of being repetitious counsel for the respondent again emphasizes that the desirability of the result sought to be accomplished by counsel for the petitioner, through having this Court interpret Section 301 according to his wishes, is not the issue in this case.

The case is a simple problem dealing with the jurisdiction of the federal courts.

*Argument.*

Jurisdiction in the federal courts may constitutionally be based upon diversity of citizenship or upon the assertion of a right created by federal law. The Constitution of the United States in Article III, Section 2, provides that:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States * * *" and
>
> "* * * to Controversies * * * between Citizens of different States; * * *"

Since Section 301 (a) of the Taft-Hartley Act does remove the requirement for diversity of citizenship, it is important for this Court to determine what federal substantive rights, if any, are created by the statute because it has been argued that if no federal substantive rights are created, the removal of the requirement for diversity of citizenship does not in and of itself give the federal courts jurisdiction in cases where no law of the United States is involved. If this Court determines that the statute does create a federal substantive right, then, in order to reverse the Court of Appeals, this Court must find that Section 301 (a) creates a federal substantive right which permits a union to institute suit for the individual claims of all of the employees whom it represents. A federal substantive right short of that would require this Court to find that it has no jurisdiction.

It is admitted that the majority of the courts which have considered this question have concluded that Section 301 (a) of the Act does create a federal substantive right. It is not admitted that the majority of the courts which have considered the question have concluded that

the section creates a federal substantive right of action which permits a union to sue upon the individual claims and grievances of the employees whom it represents.

The problem involved in the case at bar has nothing to do with the often discussed question of whether the federal substantive right created by the statute, if one was created, preempts the law relating to violation of collective bargaining agreements. We are not here concerned with the question of whether, if Section 301 (a) created a federal substantive right of action, that right of action is to be decided in accordance with state or federal substantive law. We are concerned only with the question of whether the federal substantive right of action, if any, created by the statute goes so far as to say that a union may institute a suit in a federal court for all of the individual rights, claims, and grievances the employees whom it represents might have, as distinguished from the joint rights of those employees.

It would be entirely possible for this Court to hold that a federal substantive right was created by Section 301 (a), but that the right created is only one which enables a union to institute suit in a federal court for the breach of joint rights obtained by the union at the bargaining table; an action for the joint rights which were granted by the employer to the union in return for the union's promise that the employees whom it represents would not violate a no-strike provision in the contract. This Court could so rule without deciding that the substantive right created by the statute enables the union to institute a suit in a federal court to recover on behalf of the employees whom it represents for individual rights of those employees—to recover "salaries" which the com-

pany has promised the employe in return for the employee's promise to work and to perform services.

Counsel for respondent does not have to argue that Section 301 (a) did not create a federal substantive right; he need only argue that any federal substantive right which might have been created by the Congress cannot encompass the interpretation of that right sought by counsel for the petitioner in this Court.

Notwithstanding the argument made by counsel for the petitioner on page 39 of his brief, the Taft-Hartley Act did not remove the individual employee's remedies—remedies which are embedded in the common law. In point of fact the Taft-Hartley Act is replete with instances where the Congress specifically preserved the rights of the individual. Section 9 (a) of the Act preserves to the employee the right to have his grievances adjusted individually and *without the intervention of the union.* This right to have his grievance adjusted *without the intervention of the union* is not mentioned by counsel for the petitioner in his brief other than to state that an employee has the right to present his grievance individually and have it adjusted; however, he makes much of the fact that the right is conditioned upon the fact that the adjustment must be consistent with the collective bargaining agreement and that the union must be given an opportunity to be present at the hearing.

It would be anomalous, indeed, to hold, as petitioner contends, that the Congress in one section of the Act preserved the right of the individual to adjust his own grievance individually and without the intervention of the union, and then to give, in Section 301, the right to

the union to adjust that grievance, even to the point of instituting a suit for it in a federal court of the United States. Other instances in the Taft-Hartley Act where Congress has emphasized the rights of the individual employee are found in Sections 157, 158 (b) (1), 159 (a), 159 (e), and 186 (c) (4) of Title 29 USCA.

Petitioner's theory makes no provision for the individual employee who may be aggrieved by the union's interpretation of his contract of hire. The employee could not sue the union in the state court because the suit would involve the construction of his individual contract which the petitioner insists must be construed by the federal court. And the individual could not sue in the federal court because Section 301 does not provide for suits between the employee and the union. In considering this situation, Judge Staley, speaking for the majority of the Court of Appeals in the case at bar, 210 F. 2d 623, page 630 aptly said,

> "Everybody admits that it is his (employee) individual right and not that of the union. To say that he has a right to his salary but no remedy to enforce it is a judicial nightmare."

In the case before this Court there are 4,000 separate law suits. Although the union here represents that it is suing as a single plaintiff on behalf of all of the employees, the fact remains that there are 4,000 individuals who have to prove their rights to their salaries, and the fact remains that the employer must make a separate defense to each one of these individual claims. It is impossible to estimate the burden which this will place upon the District Court for the Western District of Pennsylvania.

*Argument.*

In stating his position, counsel for the respondent is not categorically answering petitioner's brief nor its several appendices. Counsel for respondent is not a labor economist; he is a federal practitioner. Petitioner's brief is an excellent attempt to obtain for labor through an interpretation of the Supreme Court of the United States, what labor itself has been unable to obtain from the Congress. The theories advocated by petitioner in its brief have a certain superficial attractiveness. The brief is clever. It is neat. But it does not set forth sound principles of federal jurisprudence.

Two examples suffice to illustrate counsel for petitioner's misconception of the basic concept of the federal system of jurisprudence. On page 12 of his brief, counsel supposes a suit alleging the non-performance of a contractual obligation. He bases federal jurisdiction upon diversity and then supposes that the obligation sued upon was not the obligation of the defendant but the obligation of a person who was resident of the same state as the plaintiff. He then asks if this would defeat diversity jurisdiction. He answers his question by stating that it obviously would not. He says that the court would have jurisdiction but that the plaintiff would lose his law suit.

A federal practitioner would state that his illustration is inept. The plaintiff loses his suit because he could not establish liability against the citizen of the other state whom he had sued, diversity having been established. The fact that the person who was liable resided in the same state as the plaintiff has nothing to do with the case. The example assumes the very thing which the petitioner has to establish in the case at bar, *i.e.*, juris-

diction. A federal practitioner would never compare diversity jurisdiction with jurisdiction arising under a federal law. They simply are not the same thing. In addition it must be pointed out that a federal court always has jurisdiction to determine jurisdiction.

Again, on page 13, counsel for the petitioner supposes a suit brought by A against B in tort for personal injuries, the jurisdiction of the federal court being based upon diversity. He then supposes that B should prove on the trial of the case that it was not B who committed the tort but some third person and that the third person was a resident of the same state as the plaintiff. He argues that it thus follows that the court does have jurisdiction but that the plaintiff loses his suit upon the merits.

The federal practitioner would analyze the illustration in this manner. A, a resident of one state, has sued B, a resident of another state. If the case involves the requisite amount in controversy, the court does have jurisdiction and the plaintiff loses his suit because the defendant did not commit the tort. The fact that the person who had committed the tort was a resident of the same state as the plaintiff has nothing to do with the case. Petitioner's example could only be pertinent here if upon the trial of the case B established that he and not some third person was a citizen of the same state as A. In the case at bar to establish jurisdiction the petitioner must show that this is a suit within the federal law, and that federal law permits a union to institute suit to recover for the individual rights, claims, and grievances of the employees whom it represents.

Again, the analysis made by counsel for petitioner of the sixty-five different cases in which a suit for breach

of contract under Section 301 (a) was involved, is only superficially accurate. The respondent does not, of course, contend that an *employer* may not sue a *union* for a breach of a collective bargaining agreement, provided that agency is established. Therefore, it is respectfully submitted that the first twenty-five cases in Appendix D of petitioner's brief under the heading of "Suits by Employers Against Unions" are not relevant to the issue involved in the case at bar. Since we are not here concerned with "Suits by Union Against Union" or "Suits by Individuals," the cases listed under those two headings in Appendix D of petitioner's brief are likewise of no aid to this court. Therefore, of the sixty-five cases listed, only thirty-seven—those listed under the heading of "Suits by Unions Against Employers"—are relevant to the case at bar. This list is further reduced to twenty-five by the elimination of those cases listed under subsections B, C, and D. Those cases, as petitioner states, deal with breaches which effect only the union, breaches involving the whole collective bargaining agreement and unspecified breaches.

There are, then, only twenty-five cases listed by petitioner in Appendix D of possible relevance. It is respectfully submitted that in many of these cases the alleged breach affected joint rights, rather than several rights, and that those cases are not authority for the construction of Section 301 which petitioner is urging upon this Court. As Judge Staley pointed out, it has been common for courts to take jurisdiction under Section 301 *sub silentio* or to make an *ipse dixit* declaration that jurisdiction exists. A taking of jurisdiction *sub silentio* is no authority at all. *United States v. L. A. Tucker Truck*

*Line, Inc.*, 344 U. S. 33, 38, (1952). An *ipse dixit* holding of jurisdiction ought not to be given much more weight.

Finally, it is respectfully submitted that petitioner's one or two word parenthetical analysis of each case in Appendix D of his brief is inadequate. Counsel for respondent, therefore, submits his own, more extensive analysis in Appendix A of this brief.

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## CONCLUSION

Counsel for respondent respectfully submit that the judgment of the Court of Appeals dismissing the Complaint for lack of jurisdiction over the subject matter should be affirmed.

Respectfully submitted,

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## APPENDIX "A"

1. *American Federation of Labor v. Western Union Tel. Co.,* 179 F. 2d 535 (C.A. 6, 1950) (Suit by union for alleged breach of company's pension plan. Company's defense was that pension plan was not part of the collective agreement. Court held that the union could maintain the suit. It is to be noted that the collective agreement specifically provided that the union had the right to represent any of its members in matters before the company's pension committee.)

2. *Bakery and Confectionery Workers' International Union v. National Biscuit Co.,* 78 F. Supp. 517 (E. D. Pa. 1948) aff'd 177 F. 2d 684 (C.A. 3, 1949), (Suit involving compulsory retirement. Question of jurisdiction not raised in the District Court. The question of jurisdiction was passed by the Court of Appeals *sub silentio,* mentioned by Judge Staley in his opinion in Footnote 12.)

3. *Bakery Workers v. General Baking Co.,* 97 F. Supp. 73 (S.D.N.Y. 1951) (Suit for damages as a result of a lock-out. A lock-out is one of the enumerated rights, *qua* union, which the Court of Appeals in the case at bar held was within Section 301. Jurisdiction was held by *ipse dixit* statement.)

4. *Food and Service Trades Council v. Retail Associates,* 115 F. Supp. 221 (N. D. Ohio 1953) (Suit by union for alleged breach of collective agreement because employer failed to pay commissions according to contract. The complaint alleged injuries *to the union* as a result of the breach and requested

*damages* for those injuries in the amount of the commissions due.)

5. *Insurance Agents v. Prudential Ins. Co.,* 34 LRR Man. 2678 (E.D. Pa. 1954) (Suit by union to compel arbitration. Court of Appeals in the case at bar held that arbitration was a right *qua* union which was within Section 301.)

6. *International Union of Operating Engineers v. Pfeiffer Brewing Co.,* 115 F. Supp. 650 (E.D. Mich. 1953) (Suit by union for pay differentials. Jurisdiction was passed *sub silentio*)

7. *Lexington Federation of Tel. Wkrs. v. Kentucky Tel. Corp.,* 94 F. Supp. 894 (E. D. Ky. 1951) aff'd 202 F. 2d (1953) (This is the wrong citation. Case does not concern the Taft-Hartley Act. Correct citation is 11 F.R.D. 526 which is a suit by union for wages under amendment to the Fair Labor Standards Act. Jurisdiction was passed *sub silentio*).

8. *Local 207 v. Landers, Frary & Clark,* 119 F. Supp. 877 (D. Conn. 1954) (Suit by union to compel arbitration. The Court of Appeals in the case at bar held that arbitration was a right *qua* union within Section 301.)

9. *Local 379 v. Jacobs Mfg. Co.,* 120 F. Supp. 228 (D. Conn. 1953) (Arbitration. Court of Appeals in the case at bar held that arbitration was a right *qua* union which was within Section 301. Jurisdiction held by *ipse dixit* statement).

10. *Local 793, UAW-CIO v. Auto Specialties Co.,* 15 F.R.D. 261 (W.D. Mich. 1951) (Suit by union to

collect holiday pay, mentioned by Judge Staley in his opinion in Footnote 12.)

11. *Local 937 v. Royal Typewriter Co.,* 88 F. Supp. 669 (D. Conn. 1949) (Suit by union for *damages* for breach of wage provisions in contract. Jurisdiction held by *ipse dixit* statement, mentioned by Judge Staley in his opinion in Footnote 12.)

12. *Local Union No. 600 v. Ford Motor Co.,* 113 F. Supp. 834 (E. D. Mich. 1953) (Suit by union to prevent decentralization of employer's plant. This involves a right *qua* union within the decision of the Court below.)

13. *Mercury Oil Refining Co. v. Oil Workers Int. Union, CIO,* 187 F. 2d 980, C.A. 10, 1951) reversing in part *Oil Workers International Union v. Mercury Oil Refining Co.,* 89 F. Supp. 702 (W. D. Okla. 1950) (Arbitration. Court of Appeals in the case at bar held that arbitration was a right *qua* union which was within Section 301. Jurisdiction held by *ipse dixit* statement, mentioned by Judge Staley in his opinion in Footnote 12.)

14. *Metal Polishers v. Rubin,* 85 F. Supp. 363 (E. D. Pa. 1949) (Suit by union for *damages* because of lock-out. Lock-out involves a right *qua* union within Section 301 and decision of Court below.)

15. *Milk and Ice Cream Drivers and Dairy Employees v. Gillespie Milk Products,* 203 F. 2d 650 (C.A. 6, 1953) (Arbitration. A right *qua* union within Section 301 and decision of Court below)

16. *Silverton v. Rich,* 119 F. Supp. 434 (S. D. Cal. 1954) (Suit by union for breach of union shop provision.

This is a right *qua* union within Section 301 and decision of Court below.)

17. *Slade v. Sun Shipbuilding Co.*, 23 LRR Man. 2054 (E. D. Pa. 1948) (Suit by an individual. Union was not a party.)

18. *Studio Carpenters Local Union v. Loew's, Inc.*, 182 F. 2d 168 (9 C.A. 1950) (Suit by union for damages because of lock-out. This is a joint right within Section 301 and decision of Court below.)

19. *Textile Workers Union v. Berryton Mills*, 28 LRR Man. 2541 (N.D. Ga. 1951) (Suit by union for damages for employer's refusal to reinstate striking employees. Jurisdiction was held by *ipse dixit* statement.)

20. *Textile Workers Union v. Aleo Mfg. Co.*, 94 F. Supp. 626 (M.D. N.C. 1950) (Arbitration. Court of Appeals in the base at bar held that arbitration was a right *qua* union which was within Section 301.)

21. *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953) (Arbitration. Court of Appeals in the case at bar held that arbitration was a right *qua* union which was within Section 301.)

22. *Textile Workers Union of American v. Arista Mills*, 193 F. 2d 529 (C.A. 4, 1951) (Suit by union for declaration of rights of striking employees under collective bargaining agreement.)

23. *United Automobile Workers v. Wilson Athletic G. Mfg. Co.*, 119 F. Supp. 948 (N.D. Ill. 1950) (Suit by union for breach of agreement regarding paid vaca-

tions. Jurisdiction was held by an *ipse dixit* statement, mentioned by Judge Staley in his opinion in Footnote 12.)

24. *United Protective Workers of America v. Ford Motor Co.,* 194 F. 2d 997 (C. A. 7, 1952) (Suit by union and an individual employee because of compulsory retirement of employee. The union asked only for a declaration of the parties' rights under the contract. The individual employee sought back pay and reinstatement; but jurisdiction of his action was not by Section 301 but by diversity of citizenship.)

25. *United Shoe Workers v. LeDanne Footwear,* 83 F. Supp. 714 (D. Mass. 1949) (Suit by union involving wage increase. Court held jurisdiction by an *ipse dixit* statement.)